N.H. Room -- Lateral File

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N.H. is probing a report of Smart juror remark

By Bob Hohler
GLOBE STAFF

CONCORD, N.H. – An investigation is under way into a report that a juror in Pamela Smart's accomplice-to-murder trial spoke publicly about the case during deliberations, a prosecutor confirmed yesterday.

"We're looking into it, and so far we haven't seen anything to indicate there has been any impropriety," said Assistant Attorney General Paul Maggiotto, declining further comment.

Should an impropriety surface, it would become a key element in the pending appeal of Smart's conviction last Friday on charges of being an accomplice to first-degree murder, conspiracy to commit murder and witness tampering.

The investigation sprang from a report by Smart's mother, Linda Wojas, to Rockingham County Superior Court Judge Douglas Gray. In an interview Saturday, Wojas said she told Gray in a closed-door hearing last Thursday that a man purporting to know one of the jurors called her home in Windham the night before and said the juror was talking about the case outside deliberations.

Authorities were able to trace the call, Wojas said, because she and her husband's phone is tapped to guard against threatening calls.

Gray questioned the unidentified male juror Thursday morning, then, apparently satisfied with his response, allowed deliberations to continue, according to a source.

The judge gave no public account of the incident and was not available yesterday for comment.

Although Gray warned jurors each day of the trial not to read, view or listen to anything about the case or to discuss it, legal authorities said an innocuous comment by a juror – such as, "Wow, what an interesting case" – might not be enough to taint deliberations.

Smart's lawyer, Mark Sisti, declined to discuss the report, saying it "would be inappropriate to comment on an ongoing investigation."

Smart, the former media director for the Winnacunnet School District in Hampton, was convicted of, among other things, aiding and abetting her former teen-age lover, William Flynn, in the murder of her husband, Gregory Smart, 24, last May 1 in their Derry condominium. Smart, 23, is serving a sentence of life without parole at the New Hampshire State Prison for Women in Goffstown.

Sisti and his partner, Paul Twomey, indicated earlier that they planned to appeal the convictions on as many as 50 issues, including Gray's refusal to grant a change of venue and his decision not to sequester the jury until Thursday morning, the day after deliberations began.

Linda Wojas and her husband, John, did not return telephone messages yesterday. The message on their answering machine said, "Thank you for helping to soften the tragic blow of Friday's verdict by calling with your love, support and hope for our family as well as Pam."